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USDC, WESTERN DISTRICT OF LA UNITED STATES DISTRICT COURT

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DATE 3/7/13

WESTERN DISTRICT OF LOUISIANA

*JOB*

ALEXANDRIA DIVISION

RUTH L. JOHNSON  
Plaintiff

Civil Action No. 12-02852

VERSUS

COMMONWEALTH OF VIRGINIA  
Defendant

JUDGE DEE D. DRELL  
MAGISTRATE JUDGE JAMES D. KIRK

REPORT AND RECOMMENDATION

Plaintiff, Ruth L. Johnson ("Johnson") filed a complaint against the Commonwealth of Virginia via the Department of Health Professions, Virginia Board of Medicine, Enforcement Division ("Commonwealth") on October 30, 2012 (Doc. 1). In the complaint, Johnson seeks monetary damages in the amount of one million dollars for the Commonwealth's negligence in issuing a medical license to Dr. Shivani Negi in 2003 and the continued reinstatement of her license thereafter. Johnson contends that but for the Commonwealth's negligence in issuing the medical license, Dr. Negi would not have been able to treat her husband, engage in medical malpractice and contribute or cause his wrongful death.

On November 15, 2012, the district judge referred the matter to the undersigned for report and recommendation to determine whether the court had subject matter jurisdiction over the case (Doc. 2).

LAW AND ANALYSIS

Screening of Claims

Because Johnson is proceeding *in forma pauperis*, her claims are subject to screening under 28 U.S.C. §1915(e)(2)(B) which provides in relevant part:

[T]he court shall dismiss the case at any time if the court determines that-

. . .

(B) the action or appeal-

(I) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

Eleventh Amendment - Sovereign Immunity

The Eleventh Amendment bars suits for damages against a state in federal court unless the state waives its sovereign immunity. U.S. Const. Amend. XI; Seminole Tribe of Florida v. Florida, 517 U.S. 44, 54 (1996). “[A]n unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state.” Employees of Dept. of Public Health and Welfare, Missouri v. Dept. of Public Health and Welfare, State of Missouri, 411 U.S. 279, 280 (1973). Though the Virginia Tort Claims Act sets forth a limited waiver of the Commonwealth’s sovereign immunity from lawsuits in state court, it does not result in a waiver of sovereign immunity from suits in federal court.

Va.Code Ann. §8.01-195.3; College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666, 675-76 (1999), citing Smith v. Reeves, 178 U.S.436, 441-445 (1900); McConnell v. Adams, 829 F.2d 1319, 1329 (4<sup>th</sup> Cir. 1987).

As there is no evidence that the Commonwealth has waived its sovereign immunity, the action is barred and should be dismissed.

Conclusion

Based on the foregoing discussion, IT IS RECOMMENDED that this case be DISMISSED WITH PREJUDICE due to lack of jurisdiction.

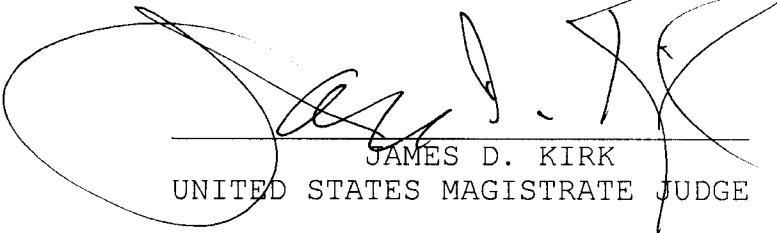
Oppositions

Under the provision of 28 U.S.C. §636(b)(1)(c) and Fed.R.Civ.P. 72(b), the parties have **fourteen (14) days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. No other briefs or responses (such as supplemental objections, reply briefs etc.) may be filed. A party may respond to another party's objections within **fourteen (14) days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

**A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) DAYS FROM THE DATE OF ITS SERVICE SHALL**

**BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM  
ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND  
LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.**

THUS DONE AND SIGNED at Alexandria, Louisiana, on this 6<sup>th</sup>  
day of March, 2013.

  
JAMES D. KIRK  
UNITED STATES MAGISTRATE JUDGE